

1 Randal R. Leonard, Esq.
2 Nevada Bar No. 006716
3 500 South 8th Street
4 Las Vegas, NV 89101
5 (702) 598-3667
6 Attorney for Debtor(s)

7
8 **UNITED STATES BANKRUPTCY COURT**

9 **DISTRICT OF NEVADA**

10 In re:

Case No.: BK-S-09-17787-BAM

Chapter 13

11 JOSE L. PINA and MARIA L. PINA
12 Debtor(s).

**OPPOSITION TO MOTION FOR RELIEF
FROM AUTOMATIC STAY**

Hearing Date: 9/22/09

Hearing Time: 9:30 a.m.

13 COMES NOW Debtor(s), JOSE L. PINA and MARIA L. PINA by and through counsel,
14 Randal R. Leonard, Esq., and hereby opposes creditor U.S. Bank's Motion for Relief from
15 Automatic Stay. This Opposition is based upon the pleadings and papers in file herein and the
16 Memorandum of Points and Authorities attached hereto.

17 Dated this 8th day of September, 2009.

18
19
20 /s/ Randal R. Leonard
21 Randal R. Leonard, Esq.
22 Nevada Bar No. 006716
23 500 South 8th Street
24 Las Vegas, NV 89101
25 (702) 598-3667
Attorney for Debtor(s)

MEMORANDUM OF POINTS AND AUTHORITIES

Creditor US Bank, claims that Debtors are behind post-petition on their Note obligations secured by a Lien. Debtor currently has a Motion to Avoid Lien, set for hearing on September 17, 2009 at 3:30 p.m. That Motion seeks to strip of Debtors second mortgage, making Debtors ability to maintain the home easier. Therefore, Debtor requests that the Court enter an Adequate Protection Order based upon the following:

1. That the Debtor finalize the procedure to strip the second mortgage.
1. That the Debtor commences the regular monthly mortgage payments.
2. That the Debtor cures the monthly payment arrears over a six month period in equal installments.
3. That the Debtor be given a 15-day default letter should the Debtor default in payments.
4. Reasonable attorney's fees and costs.

In the alternative, Debtor disputes Creditor's claims as to the amount debtor owes in monthly payments, late charges, and attorney's fees and costs. Nevertheless, should the claims prove true, Debtor requests that the Court enter an Adequate Protection Order based upon the following:

1. That the Debtor commences the regular monthly mortgage payments.
2. That the Debtor cures the monthly payment arrears over a six month period in equal installments.

1 3. That the Debtor be given a 15-day default letter should the Debtor default in
2 payments.

3 4. Reasonable attorney's fees and costs.
4

5 11 U.S.C. § 362(d) governs motions to lift the automatic stay. It states that the stay shall
6 not lift unless the party requesting relief can show (1) cause including a lack of adequate
7 protection or (2) that the property involved does not have equity and the property is not
8 necessary for an effective reorganization.

9 In this matter, the APO should protect the Creditor. Therefore, Debtors submit that the
10 stay should not lift at this time.

11 In the alternative, should the claims prove true, Debtor further requests that if the
12 Creditor has already commenced foreclosure proceedings against Debtor's property by filing a
13 Notice of Default or Notice of Breach with the County Recorder, that the Creditor be required to
14 initiate the foreclosure process again by filing the Notice of Default or Notice of Breach anew.
15

16
17 Dated this 8th day of September, 2009.

18 /s/ Randal R. Leonard
19 Randal R. Leonard, Esq.
20 Nevada Bar No. 006716
21 500 South 8th Street
22 Las Vegas, NV 89101
23 (702) 598-3667
24 Attorney for Debtor
25

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September 2009 I sent via electronic means, the foregoing

OPPOSITION TO MOTION FOR RELIEF FROM STAY to the following

ecfmail@LasVegas13.com

Rick Yarnall, Esq.

Chapter 13 Trustee

bk@wildelaw.com

Gregory L. Wilde, Esq.

Attorney for U.S. Bank

/s/ Randal R. Leonard

Randal R. Leonard, Esq

Nevada Bar No. 006716

500 South 8th Street

Las Vegas, NV 89101

(702) 598-3667

Attorney for Debtor(s)